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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.														
10/800,421	03/12/2004	Raymond H. Kraft	044182/308725	8419														
7590 Pillsbury Winthrop LLP Intellectual Property Group Suite 200 11682 El Camino Real San Diego, CA 92130-2092		02/14/2007	<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">SUGLO, JANET L</td></tr><tr><td>ART UNIT</td><td>PAPER NUMBER</td></tr><tr><td>2857</td><td></td></tr><tr><td colspan="2"><table border="1"><tr><td>MAIL DATE</td><td>DELIVERY MODE</td></tr><tr><td>02/14/2007</td><td>PAPER</td></tr></table></td></tr></table>		EXAMINER		SUGLO, JANET L		ART UNIT	PAPER NUMBER	2857		<table border="1"><tr><td>MAIL DATE</td><td>DELIVERY MODE</td></tr><tr><td>02/14/2007</td><td>PAPER</td></tr></table>		MAIL DATE	DELIVERY MODE	02/14/2007	PAPER
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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/800,421

Applicant(s)

KRAFT, RAYMOND H.

Examiner

Janet Suglo

Art Unit

2857

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


MARC S. HOFF

SUPERVISORY PATENT EXAMINER

TECHNOLOGY CENTER 2857

Continuation of 3. NOTE: The amendments require further search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because: The proposed amendments bring new issues which require further search and consideration. Applicant argues that the amendments overcome the rejections under 35 U.S.C. 101; however, Applicant's arguments are not well taken. As shown in the final office action The claims are directed to a judicial exception; as such, pursuant to the Interim Guidelines on Patent Eligible Subject Matter (MPEP 2106), the claims must have either physical transformation and/or a useful, concrete and tangible result. The claims fail to include transformation from one physical state to another. Although the claims appear useful and concrete, there does not appear to be a tangible result claimed. Further the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather on whether the final result achieved by the claimed invention is "useful, tangible, and concrete." Merely generating a model would not appear to be sufficient to constitute a tangible result, since the outcome of the generating step has not been used in a disclosed practical application nor made available in such a manner that its usefulness in a disclosed practical application can be realized. As such, the subject matter of the claims is not patent eligible.